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NOT FOR CITATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

NATHANIEL BASOLA SOBAYO, et al.,

Plaintiffs,

V.

WASHINGTON MUTUAL BANK, et al.,

Defendants.

Case Number C 06-02348 JF

ORDER¹ DENYING MOTION TO
RECONSIDER OR VACATE
JUDGMENT

[re: docket no. 20]

I. BACKGROUND

On November 1, 2006, the Court entered judgment for defendants Buckley Real Estate, Inc. and Sean C. Buckley (“the Buckley Defendants”). On November 6, 2006, Plaintiffs filed a motion to reconsider or vacate judgment. On December 20, 2006, the Buckley Defendants filed opposition to the motion. On December 28, 2006, defendant Washington Mutual joined the Buckley Defendants’ opposition. On December 29, 2006, Defendant Dodie Gaines filed opposition to the motion. Plaintiffs filed an addendum to the motion on December 29, 2006.

II. LEGAL STANDARD

¹ This disposition is not designated for publication and may not be cited.

1 Rule 60(b) provides in relevant part as follows:

2 On motion and upon such terms as are just, the court may relieve a party or a
 3 party's legal representative from a final judgment, order, or proceeding for the
 4 following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2)
 5 newly discovered evidence which by due diligence could not have been
 6 discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether
 7 heretofore denominated intrinsic or extrinsic), misrepresentation, or other
 misconduct of an adverse party; (4) the judgment is void; (5) the judgment has
 been satisfied, released, or discharged, or a prior judgment upon which it is based
 has been reversed or otherwise vacated, or it is no longer equitable that the
 judgment should have prospective application; or (6) any other reason justifying
 relief from the operation of the judgment.

8 Fed. R. Civ. P. 60(b). A Rule 60(b) motion must be made "within a reasonable time" and, with
 9 respect to reasons (1), (2), and (3), cannot be made more than one year after the judgment, order,
 10 or proceeding was entered or taken. *Id.* A Rule 60(b) motion does not affect the finality of a
 11 judgment or suspend its operation. *Id.*

12 III. DISCUSSION

13 Plaintiffs seek relief from the judgment in favor of the Buckley Defendants in the form of
 14 a continuance that would allow them to secure legal representation. Even assuming that Fed. R.
 15 Civ. P. 60(b)(6) allows such relief, the Court concludes that it would not be appropriate in this
 16 case. Plaintiffs filed the instant action nine months ago, and their efforts to secure legal
 17 representation apparently have been unsuccessful. The Court dismissed the action with leave to
 18 amend, but Plaintiffs failed to file an amended complaint within the prescribed time. The Court
 19 concludes that the possibility that Plaintiffs will obtain legal representation in the future does not
 20 justify relief from the judgment entered on November 1, 2006. Plaintiffs do not explain why they
 21 expect to succeed on the merits. Accordingly, the Court will deny the motion.

22 Defendants Washington Mutual Bank and Dodie Gaines, against whom the action also
 23 was dismissed on July 28, 2006, have asked the Court to enter judgment for them because
 24 Plaintiffs failed to amend their complaint within the prescribed time. Plaintiffs object to the
 25 proposed judgment on the same basis that they ask for relief from the judgment in favor of the
 26 Buckley Defendants. For the same reasons that it concludes that it must deny the Rule 60(b)
 27 motion, the Court concludes that it should not defer entry of judgment for the remaining
 28 defendants. Accordingly, the Court will enter judgment for Defendants Washington Mutual

1 Bank and Dodie Gaines.

2 **IV. ORDER**

3 Good cause therefor appearing, IT IS HEREBY ORDERED that the motion to reconsider
4 or vacate the judgment is DENIED. The clerk shall close the file.

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6 DATED: January 10, 2007.

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JEREMY FOGEL
United States District Judge

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1 Copies of this order have been served upon the following persons:

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